

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

TERRY LYNN KING,)
Petitioner,)
v.) No. 3:99-CV-454
RICKY BELL, Warden,)
Respondent.)

MEMORANDUM AND ORDER

This is a state prisoner's capital habeas corpus petition filed under 28 U.S.C. § 2254. Two objections are now before the court concerning two separate magistrate judge memoranda and orders. Pursuant to 28 U.S.C. § 636(b)(1)(A) and Rule 72(a) of the Federal Rules of Civil Procedure, this court may modify or set aside a portion of a magistrate judge's memorandum and order only if it is found to be clearly erroneous or contrary to law.

On April 11, 2005, petitioner filed an objection [doc. 225] to that portion of Magistrate Judge C. Clifford Shirley, Jr.'s memorandum and order [doc. 222] which denied petitioner's motion to amend [doc. 217]. By his motion to amend, petitioner seeks to add a claim under *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002), and *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). The magistrate judge correctly denied petitioner's motion because neither *Apprendi* nor *Ring* has retroactive application. See *Schrivo v. Summerlin*, ___ U.S. ___, 124 S. Ct. 2519, 159 L. Ed.

2d 442 (2004) (*Ring*); *Goode v. United States*, 305 F.3d 378 (6th Cir. 2002) (*Apprendi*). The magistrate judge's ruling thus was not clearly erroneous or contrary to law. Petitioner's objection [doc. 225] is accordingly **OVERRULED**.

On May 3, 2002, petitioner objected [doc. 190] to then-Magistrate Judge Thomas W. Phillips' memorandum and order [doc. 187] denying petitioner's motion to hold proceedings in abeyance [doc. 153]. Petitioner's abeyance motion was based on the pendency of his then-unexhausted state court *Apprendi* claim. Petitioner has subsequently informed the court that his state court *Apprendi* claim is now exhausted [docs. 217, 225]. The issue in his abeyance motion is therefore now moot. Petitioner's objection [doc. 190] is accordingly **OVERRULED**.

IT IS SO ORDERED:

ENTER:

s/ Leon Jordan
United States District Judge